

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

ERNESTO RAY LOYA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. CIV-20-922-C
	)	
RICK WHITTEN,	)	
	)	
Respondent.	)	

**ORDER**

In accordance with the Tenth Circuit’s limited remand, the Court considers whether Petitioner is entitled to a Certificate of Appealability (“COA”). In the appellate court, Petitioner seeks review of the Court’s denial of his Petition for Writ of Habeas Corpus. Because Petitioner is a state prisoner, 28 U.S.C. § 2253(c)(1)(A) requires that a Certificate of Appealability be granted prior to consideration of his claims by the appellate court. See Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000) (holding that § 2253(c)(1)(A) requires a state prisoner to obtain a COA regardless of whether he is seeking relief under § 2254 or under § 2241). A petitioner is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner can make such a showing by demonstrating that the issues he seeks to raise are deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (“[W]e give the language found in § 2253(c) the meaning ascribed it in Barefoot [v. Estelle], 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a

district court has rejected the constitutional claims on the merits, . . . [ t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” Id. Here, Petitioner has not made this requisite showing. As the Court noted, Judge Mitchell's Report and Recommendation, clearly sets forth the facts and law demonstrating Petitioner is not entitled to relief. The Court finds this conclusion is not reasonably debatable, therefore Petitioner will not be granted a Certificate of Appealability.

For the reasons stated herein, the Court finds Petitioner has failed to demonstrate he is entitled to a COA. Accordingly, his Notice of Appeal (Dkt. No. 25), which is construed as an Application for Certificate of Appealability, is DENIED.

IT IS SO ORDERED this 27th day of September 2021.

  
ROBIN J. CAUTHRON  
United States District Judge